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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,251

02/17/2004

Louis Patrone

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MTI - INTELLECTUAL PROPERTY  
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,251	<b>Applicant(s)</b> PATRONE ET AL.	
	<b>Examiner</b> Norca L. Torres-Velazquez	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 16, 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-29 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over ACHILLE (US 2002/0039869 A1).

ACHILLE discloses an extrudable thermoplastic superabsorbent polymer blend composition. (Abstract) The blend composition comprises: a superabsorbent polymer, a

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thermoplastic resin and optionally a surfactant. [0011] Among the preferred superabsorbent polymer are cellulosic or starch-graft copolymers and poly(acrylic acids). [0019] The reference further teaches that most preferred superabsorbent polymer are crosslinked, partially neutralized and/or surface treated. Neutralization with a basic substance such as sodium is preferred. [0020] The reference teaches that the amount of the superabsorbent polymer to be included in the thermoplastic superabsorbent polymer blend composition will vary depending on factors such as the desired level of blocking, absorbing or stopping the migration of water and/or other fluids in the end use application, etc. [0021] The superabsorbent polymer is present in an amount equal to or greater than about 1 part per weight or even equal to or greater than about 20 parts per weight. [0022] The preferred thermoplastic resins are acrylic polymers, with polyacrylic acid (PAA). [0025] The thermoplastic resin is present in an amount equal to or greater than about 30 per weight. [0027] It is noted that the reference further teaches that the blend compositions contain at least one superabsorbent polymer, such blend composition may or may not be superabsorbent, depending upon the level and absorbency of the superabsorbent polymer in the blend composition and the availability of the superabsorbent polymer to aqueous media. [0029] ACHILLE further teaches that the blends may further comprise additional additives such as waxes. [0031] The blend composition are suited for use in articles such as monolayer films, sheets, fibers, among others. (Abstract)

It is the Examiner's interpretation that the polyacrylic acid resins of the reference read on the claimed superabsorbent and the cellulosic or starch-graft copolymers described by the reference will read on the presently claimed channelling agent. The reference teaches the use of waxes in a blend.

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Although ACHILLE does not explicitly teach the claimed feature that the channeling agent “conducts liquid water through the wax to the superabsorbent but does not conduct water vapor” it is reasonable to presume that this property is inherent to the composition of ACHILLE. Support for said presumption is found in the use of like materials (i.e. the reference uses a similar blend and teaches that the amount of the amount of the superabsorbent polymer will vary, for example, on the desired level of blocking, absorbing or stopping the migration of water and/or other fluids in the end use application, etc.). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of conducting liquid water through the wax to the superabsorbent but does not conduct water vapor would obviously have been present once the ACHILLE product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Norca L. Torres-Velazquez/  
Primary Examiner, Art Unit 1794